

Morgan, Lewis & Bockius LLP  
2020 K Street, NW  
Washington, District of Columbia 20006-1806  
Tel. 202.373.6000  
Fax: 202.373.6001  
www.morganlewis.com

**Morgan Lewis**  
C O U N S E L O R S   A T   L A W

**Andrew D. Lipman**  
+1.202.373.6033  
andrew.lipman@morganlewis.com

September 28, 2015

**ELECTRONICALLY FILED**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Re: **WC Docket No. 12-375: Rates for Interstate Inmate Calling Services**

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.1206(b)(1), the undersigned submits this written *ex parte* presentation, on behalf of clients with an interest in the provision of Inmate Calling Services (ICS), for filing in the above-referenced docket.

The undersigned attaches Proposed Rules for the FCC's consideration consistent with the positions advocated in previous filings in this docket.<sup>1</sup> For example, Proposed Rule §64.6060 sets forth a per-minute cap, separate from the ICS rate caps, on ICS provider payment of site commissions. Proposed Rule §64.6090 provides a limited transition between the FCC's adoption of new rules and their effective date.

In addition, Proposed Rule § 64.6050 sets forth a number of limited ancillary fees ICS providers may charge, consistent with the Joint Provider Proposal dated September, 15, 2014. Since the Joint Providers collectively have agreed to submit to regulation of a particular set of ancillary charges (those permitted under the proposed rules as well as those barred by implication), the FCC can assume without further inquiry that these particular charges are for communications services.

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<sup>1</sup> Letters from Andrew D. Lipman to Marlene H. Dortch, WC Docket No. 12-375, filed September 21, 2015; July 21, 2015; July 6, 2015; June 1, 2015, May 1, 2015; and April 8, 2015.

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To assist the FCC, the undersigned has attached blacklines of the rules proposed by Pay Tel Communications, Inc.<sup>2</sup> and Securus Technologies, Inc.<sup>3</sup>

Please do not hesitate to contact the undersigned should you have any questions about this submission.

Sincerely,

*/s/ Andrew D. Lipman*

Andrew D. Lipman

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<sup>2</sup> Letter from Marcus W. Trathen, Counsel to Pay Tel Communications, Inc., to Marlene H. Dortch, WC Docket No. 12-375 (July 13, 2015).

<sup>3</sup> *Ex Parte* Submission of Securus Technologies, Inc., WC Docket No. 12-375 (July 27, 2015).

**EXHIBIT A**

**A. LIPMAN PROPOSED RULES**

**ATTACHMENT - Proposed Rules**

This subpart is replaced in its entirety by the following:

**§ 64.6000 Definitions**

As used in this subpart:

- (1) "ADP", or "Average Daily Population", means the average monthly inmate population in a Confinement Facility. Where more than one Confinement Facility is administered under one ICS contract, ADP shall be calculated by adding together the numbers of inmates housed in all facilities under the contract. For purposes of the ICS Rate Cap and Facility Administrative Support, ADP shall be initially determined as of the commencement of service based on the average of the preceding calendar year and then updated once per year in January with any required rate adjustments to be made effective February 1.
- (2) "Ancillary Charges" means any charges to Consumers for communications services not included in the charges assessed for individual calls and that Consumers may be assessed for the use of Inmate Calling Services.
- (3) "Collect calling" means a calling arrangement whereby a credit qualified called party agrees to pay for charges associated with an Inmate Calling Services call originating from an Inmate Telephone.
- (4) "Consumer" means the party paying a Provider of Inmate Calling Services.
- (5) "Confinement Facility" means city, county, regional, state and federal facilities, including jail, detention, prison, work release, mental health, juvenile, and U.S. Immigration and Customs Enforcement facilities.
- (6) "Debit calling" means a calling arrangement that allows an inmate to pay for ICS by purchasing a prepaid card or transferring funds to a debit phone account.
- (7) "Direct billed calling" means a calling arrangement that allows credit qualified called parties to establish an account to accept collect phone calls and be direct billed in arrears for those calls by the ICS vendor.
- (8) "Facility Administrative Support" means a charge measured on a per minute basis, to be passed through to a Confinement Facility to offset its administrative costs associated with the provision of ICS.
- (9) "Inmate" means a person detained at a Confinement Facility regardless of the duration of the detention.
- (12) "Inmate calling services", or "ICS", means the offering of local, interstate, intrastate, and/or international calling capabilities from an Inmate Telephone.
- (13) "Inmate Telephone" means a telephone instrument or other device capable of initiating telephone calls set aside by authorities of a Confinement Facility for use by Inmates.
- (14) "Prepaid Calling" means a calling arrangement that allows Consumers to pay in advance for a specified amount of Inmate Calling Service.
- (15) "Prepaid collect calling" means a calling arrangement that allows the called party to establish a prepaid account for acceptance and payment of future calls from inmates.

(16) "Provider of Inmate Calling Services", "ICS Provider" or "Provider" means any communications service provider that provides Inmate Calling Services, regardless of the technology used.

**Exhibit A§ 64.6010 Rates for Telecommunications Relay Service (TRS) Calling**

No Provider shall levy or collect any charge in addition to or in excess of the rates for Inmate Calling Services (including any applicable Facility Administrative Support) or charges for Ancillary Charges for any form of TRS call.

**§ 64.6020 Billing-Related Call Blocking**

No Provider shall prohibit or prevent completion of a Collect Calling call or decline to establish or otherwise degrade Collect Calling solely for the reason that it lacks a billing relationship with the called party's communications service provider unless the Provider offers Debit Calling, Direct Billed Calling, or Prepaid Collect Calling.

**§ 64.6030 Annual Reporting and Certification Requirements**

(a) All Providers must submit a report to the Commission, on April 1 of each year, stating the total amount of payments the Provider remitted to any entity identified in the definition of Site Commissions that is adopted herein.

(b) On April 1 of each year, all Providers must file certifications of (i) the most senior person who has authority to bind the Provider (normally the CEO), (ii) the most senior in-house attorney for the Provider (normally the General Counsel), and (iii) the most senior person charged with handling the Provider's financial accounts (normally the CFO), that the Provider has complied with all Rules adopted herein to the best of their knowledge, information, and belief.

(c) In addition to the certification required under subsection (b), on April 1, 2016, April 1, 2017 and April 1, 2018 all ICS Providers must submit a certification executed by an officer of the company providing the following information —

- i) the ICS provider's current interstate and intrastate maximum ICS rates;
- ii) the ICS provider's current list of ancillary services and fees;
- iii) the locations where the ICS provider makes Facility Administrative Support payments and the amount of such payments.

**§ 64.6040 Inmate Calling Services Rate Cap**

(a) No Provider may charge a rate for any inmate-initiated call from a Confinement Facility that exceeds the following rates (excluding any charge for Facility Administrative Support):

Type	Rate Cap
All Debit and Prepaid ICS Calls	\$0.20/min.
All Collect Calls	\$0.24/min.

(b) All charges shall be assessed on a per-minute basis for the actual call duration, measured from call acceptance to call termination rounded up to the next full minute. No Provider may charge a per-call fee, per-call surcharge, or connection fee.

(c) An ICS Provider may petition for a Waiver of the Rate Cap if the rate cap does not allow the Provider to economically serve the Confinement Facility. A petitioner may establish good cause for a waiver by demonstrating it faces special circumstances and that a waiver would be



in the public interest. Factors that may be considered for granting a waiver include costs directly related to the provision of ICS; demand levels and trends; a reasonable allocation of common costs shared with the ICS Provider's non-ICS; and general and administration costs data. A Waiver will be evaluated at a holding company level.

(d) For any security-related or call-completion related features not contained within the cost information submitted by the Provider in response to the 2014 Mandatory Data Collection, the Provider may seek a Waiver of the Rate Caps in order to recover the cost of that feature. A Petition for Waiver (i) must set forth the cost basis for the requested new rate, and (ii) will be deemed granted within forty-five (45) calendar days of being filed.

#### **§ 64.6050 ICS Ancillary Charges**

Only the following Ancillary Charges may be charged in connection with ICS:

(a) Transaction or Payment Processing Fee. A Provider may charge up to \$6.95 for a transaction by which a Consumer uses a credit card or debit card (i) to fund a Debit account, or (ii) to pay amounts due in arrears.

(b) Money Transfer Fee. A Provider may charge up to \$2.50 to administer payments processed by or generated through a third-party money-transfer entity.

(c) Voice Biometrics Fee. A provider may add up to \$0.02 to the per-minute calling rate for voice biometrics where such technology is deployed and active.

(d) Optional, Single Call Programs. Single Call programs, including "convenience" or "premium payment" options, which allow the called party to pay for a single call without establishing a prepaid collect account (e.g., billing directly to credit/debit card or billing to an existing wireless telephone account), may only be offered as follows:

- (i) The Provider must clearly disclose to Consumers at the beginning of each call that the ability to place a Single Call is optional and must make other methods of payment available.
- (ii) Total charges for a Single Call shall not exceed the amount that the Provider charged for that service on December 31, 2014.

(e) Validation/ Security Fee. A Provider may charge, on a per-call basis, a fee to recover the cost of call validation that is up to 8% of the total calling rate charged for the call, excluding any per-minute Facility Administrative Support charge that may be added to the calling rate.

#### **§ 64.6060 Facility Administrative Support**

(a) No Provider may pay a Site Commission or any other form of monetary compensation except for the Facility Administrative Support established herein. Payment of a Site Commission exceeding the Facility Administrative Support established in this part shall be an unjust and unreasonable practice.

(b) A Confinement Facility can elect to receive Facility Administrative Support by requiring the collection of such support in the contract governing the provision of ICS by the Provider.

(c) To compensate Confinement Facilities for their costs incurred in connection with the provision of ICS, an ICS Provider may collect from Consumers charges for Facility Administrative Support, such charges to be assessed on a per minute of use basis, not to exceed the following amounts, for all completed, billed, inmate-initiated calls from an electing Confinement Facility.

Size (ADP)	Maximum Amount per Minute
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1-299	\$0.03
300-999	\$0.02
1,000+	\$0.01

The entire amount of Facility Administrative Support charges collected by a Provider from Consumers shall be passed through to an electing Confinement Facility. A Provider may only collect Facility Administrative Support charges when the Confinement Facility has elected to receive such payment. Nothing in this section is intended to permit a Provider to collect or to pay Facility Administrative Support in excess of the amount provided for in a contract between the Provider and the Confinement Facility.

(d) No pre-payment or advance payment of Facility Administrative Support shall be permitted. Costs associated with Additional Products or Services provided to the Confinement Facility shall not be deducted from the Facility Administrative Support payment.

#### **§ 64.6080 Account Balances**

Account balances must be refunded to customers at any time upon Consumer request at no charge to the Consumer. Unclaimed account balances must be treated in accordance with applicable state law regarding unclaimed property.

#### **§ 64.6090 Effective Date and Transition Period**

(a) Except as provided in subsection (b), all provisions of this subpart become effective 30 days after publication of these rules in the *Federal Register* (Effective Date).

(b) Sections 64.6040 (Inmate Calling Services Rate Cap) and 64.6060 (Facility Administrative Support) shall not apply to ICS services provided pursuant to contracts that were executed and were "in service" on or before [the day prior to adoption of the Order]) until 60 days after the Effective Date or until termination of the contract, whichever is earliest. The terms of existing contracts may not be extended during the 60 day transition period, whether by exercise of an existing option or otherwise.

**EXHIBIT B**

**COMPARISON OF A. LIPMAN PROPOSED ICS RULES  
TO PAYTEL PROPOSED RULES FILED JULY 13, 2015**



## PROPOSED ICS RULES

The following interim rules are repealed (and the new rules have been recodified):

~~§ 64.6010 Cost-Based Rates for Inmate Calling Services~~

~~§ 64.6020 Interim Safe Harbor~~

~~§ 64.6030 Inmate Calling Services Interim Rate Cap~~

### ATTACHMENT — Proposed Rules

This subpart is replaced in its entirety by the following:

#### **§ 64.6000 Definitions**

As used in this subpart:

~~(1) Additional Products and Services refers to products and services offered by an ICS Provider that are not required for traditional ICS and includes: (i) products and services offered to the inmate “ADP”, or consumer (e.g., email or video visitations services) and paid for by the inmate or consumer, the provider through excess revenues (profits), or the facility through a separately negotiated charge; and (ii) products and services offered to the facility (e.g., Jail Management Services, Automated Inquiry Systems, Cell Phone Detection, Data Inquiry Systems) and paid for by the provider through excess revenues (profits) or the facility through a separately negotiated charge.~~

~~(1) (2) ADP, or average daily population, “Average Daily Population”, means the average monthly inmate population in a Confinement Facility as certified by the applicable facility. Where more than one Confinement Facility is administered under a common one ICS contract, ADP shall be calculated by averaging across adding together the numbers of inmates housed in all facilities under the contract. For purposes of the ICS Rate Cap and Facility Administrative Support, ADP shall be initially determined as of the commencement of service based on the average of the preceding calendar year and then updated once per year in January with any required rate adjustments to be made effective February 1. ADP reported and certified by the applicable facility may be relied upon and presumed to be accurate by the ICS Provider.~~

~~(2) (3) “Ancillary chargesCharges” means any charges to Consumers for communications services not included in the charges assessed for individual calls and that Consumers may be assessed for the use of Inmate Calling Services. Ancillary Charges includes, but is not limited to, fees to create, maintain, or close an account with a Provider; fees in connection with account balances, including fees to add money to an account or transfer money between accounts; and fees for obtaining refunds of outstanding funds in an account;~~

~~(3)~~ ~~(4)~~ “Collect calling” means a calling arrangement whereby a credit qualified called party agrees to pay for charges associated with an Inmate Calling Services call originating from an Inmate Telephone;

~~(4)~~ ~~(5)~~ “Consumer” means the party paying a Provider of Inmate Calling Services;

~~(5)~~ ~~(6)~~ “Confinement ~~facility~~ Facility” means city, county, regional, state and federal facilities, including jail, detention, prison, work release, mental health, juvenile, and U.S. Immigration and Customs Enforcement facilities;

~~(6)~~ ~~(7)~~ “Debit calling” means a calling arrangement that allows an inmate to pay for ICS by purchasing a prepaid card or transferring funds to a debit phone account;

~~(7)~~ ~~(8)~~ “Direct billed calling” means a calling arrangement that allows credit qualified called parties to establish an account to accept collect phone calls and be direct billed in arrears for those calls by the ICS vendor;

~~(8)~~ ~~(9)~~ “Facility Administrative Support” means a ~~component of ICS costs, charge~~ measured on a per minute basis, ~~related to be passed through~~ to a ~~confinement facility’s~~ Confinement Facility to offset its administrative costs associated with the provision of ICS;

~~(9)~~ ~~(10)~~ “Inmate” means a person detained at a ~~confinement facility,~~ Confinement Facility regardless of the duration of the detention;

~~(12)~~ ~~(11)~~ “Inmate calling services,” or “ICS,” means the offering of ~~local,~~ interstate, intrastate, and/or international calling capabilities from an Inmate Telephone;

~~(13)~~ ~~(12)~~ “Inmate ~~telephone~~ Telephone” means a telephone instrument or other device capable of initiating telephone calls set aside by authorities of a ~~correctional institution~~ Confinement Facility for use by Inmates;

~~(13)~~ Jail means a confinement facility operated by a city, county, sheriff or regional jail authority intended primarily for the short-term housing and detention of individuals who have been arrested for a criminal offense and are attempting to arrange bail or are being held pending trial or other disposition of the charges. The term includes city, county or regional facilities that have contracted with a private company to manage day-to-day operations as well as privately owned and operated facilities primarily engaged in housing city, county or regional jail inmates;

~~(14)~~ ~~(14)~~ “Prepaid Calling” means a calling arrangement that allows Consumers to pay in advance for a specified amount of Inmate Calling Service.

~~(15)~~ “Prepaid collect calling” means a calling arrangement that allows the called party to establish a prepaid account for acceptance and payment of future calls from inmates;

~~(15)~~ Prison means a confinement facility operated by a state or territorial Department of Correction or the Federal Bureau of Prisons housing sentenced individuals serving an extended defined period of incarceration. The term includes private prisons that provide outsourced housing of inmates for State Departments of Correction or the Federal Bureau of Prisons and prison facilities that are



managed by private companies under contract with State Departments of Correction or the Federal Bureau of Prisons;

~~(16) (16)~~ “Provider of Inmate Calling Services, ~~or~~,” “ICS Provider,” or “Provider” means any communications service provider that provides Inmate Calling Services, regardless of the technology used.

~~(17) (17)~~ “~~Site commission~~Commission” means any monetary payment in money, in kind services or tangible or intangible goods or property, regardless of the form or the terminology used to describe the payment, excluding Facility Administrative Support, from remitted by an ICS Provider on a recurring or non-recurring basis to (a) the entity that operates a correctional institution, (b) the entity with which a Provider enters into an agreement to provide ICS to a Confinement Facility, (c) a governmental agency that oversees a ~~correction~~correctional institution, (d) the state, county, or city where the correctional institution is located, or (e) to an agent or other representative of ~~the entities~~an entity described in (a)-(d).

#### **§ 64.6010 Rates for Telecommunications Relay Service (TRS) Calling**

No Provider shall levy or collect any charge in addition to or in excess of the rates for Inmate Calling Services (including any applicable Facility Administrative Support) or charges for Ancillary Charges for any form of TRS call.

#### **§ 64.6020 Billing-Related Call Blocking**

No Provider shall prohibit or prevent completion of a Collect Calling call or decline to establish or otherwise degrade Collect Calling solely for the reason that it lacks a billing relationship with the called party’s communications service provider unless the Provider offers Debit Calling, Direct Billed Calling, or Prepaid Collect Calling.

#### **§ 64.6030 Annual Reporting and Certification RequirementRequirements**

~~(a)~~ All Providers must submit a report to the Commission, ~~by~~on April 1 of each year, ~~regarding their interstate and intrastate Inmate Calling Services for the prior calendar year. The report shall contain:~~

~~(1) The following summary information broken out by Confinement Facility (including the name of the facility and the state it is located in); by jurisdictional nature to the extent that there are differences among interstate, intrastate, and local calls; and by the nature of the billing arrangement to the extent that there are differences among Collect Calling, Debit Calling, Direct Billed Calling, Prepaid Collect Calling and Single Calls:~~

- ~~(i) — Rates for Inmate Calling Services;~~
- ~~(ii) — Facility Administrative Support, if applicable, including any per-minute recovery charged to consumers;~~
- ~~(iii) — Ancillary charges, by category;~~
- ~~(iv) — Total billable calls completed;~~
- ~~(v) — Total minutes of use;~~
- ~~(vi) — Total call revenue;~~
- ~~(vii) — The average duration of calls;~~
- ~~(viii) — Facility ADP;~~

- (ix) ~~Percentage of stating the total ADP comprised of prison inmates (for Jails only);~~  
 (x) ~~List of Additional Products and Services provided and source of funding (if paid by consumer, include cost per unit charged to consumer);~~

(a) ~~(2) A certification that amount of payments the Provider was in compliance during the entire prior calendar year with the rates for Telecommunications Relay Service as required by § 64.6010; remitted to any entity identified in the definition of Site Commissions that is adopted herein.~~

(b) ~~(b) An officer or director from~~ On April 1 of each year, all Providers must file certifications of (i) the most senior person who has authority to bind the Provider ~~must certify that~~ (normally the CEO), (ii) the most senior in-house attorney for the Provider (normally the General Counsel), and (iii) the most senior person charged with handling the Provider's financial accounts (normally the ~~reported information and data are accurate and complete~~ CFO), that the Provider has complied with all Rules adopted herein to the best of his or her ~~their~~ knowledge, information, and belief.

(c) In addition to the certification required under subsection (b), on April 1, 2016, April 1, 2017 and April 1, 2018 all ICS Providers must submit a certification executed by an officer of the company providing the following information —

- i) the ICS provider's current interstate and intrastate maximum ICS rates;
- ii) the ICS provider's current list of ancillary services and fees;
- iii) the locations where the ICS provider makes Facility Administrative Support payments and the amount of such payments.

#### § 64.6040 Inmate Calling Services Rate Cap

(a) No Provider may charge a rate for any inmate-initiated call from a Confinement Facility that exceeds the following ~~rate caps~~ rates (excluding any charge for Facility Administrative Support):

<u>Facility Type</u>	<u>Size (ADP)</u>	<u>Rate Cap</u>
<u>Jail</u> <u>All Debit and Prepaid ICS Calls</u>	0-349	\$0.22/min.
	350-999	\$0.20/min.
	1,000-2,499	\$0.18/min.
	2,500 and above	\$0.1624/min.
<u>Prison</u>	<u>All Collect Calls</u>	\$0.08/min.

(b) All charges shall be assessed on a per-minute basis for the actual call duration, measured from call acceptance to call termination rounded up to the next full minute. ~~No No Provider may charge a per-call fee, per-call surcharge, or connection fee may be charged.~~

(b) For purposes of the rate cap set in (a), Jails that are contracted to house prison inmates averaging 40% or more of the total facility population (as reported annually by the facility) shall utilize a split rate structure; prison inmates will be charged no more than the prison rate cap and jail inmates will be charged no more than the jail rate cap. ICS providers in Jails shall certify prison contracted population upon first initiating service and by annual certifications thereafter to be posted on their websites.



~~(e) For purposes of the rate cap set in (a), detention, work release, mental health, juvenile, and U.S. Immigration and Customs Enforcement facilities, other than those that are bid as part of a Department of Correction group, are be subject to the cap applicable to Jails. Work release, mental health, juvenile, and U.S. Immigration and Customs Enforcement facilities bid as part of a Department of Correction group are subject to the cap applicable to Prisons.~~

(c) An ICS Provider may petition for a Waiver of the Rate Cap if the rate cap does not allow the Provider to economically serve the Confinement Facility. A petitioner may establish good cause for a waiver by demonstrating it faces special circumstances and that a waiver would be in the public interest. Factors that may be considered for granting a waiver include costs directly related to the provision of ICS; demand levels and trends; a reasonable allocation of common costs shared with the ICS Provider's non-ICS; and general and administration costs data. A Waiver will be evaluated at a holding company level.

(d) For any security-related or call-completion related features not contained within the cost information submitted by the Provider in response to the 2014 Mandatory Data Collection, the Provider may seek a Waiver of the Rate Caps in order to recover the cost of that feature. A Petition for Waiver (i) must set forth the cost basis for the requested new rate, and (ii) will be deemed granted within forty-five (45) calendar days of being filed.

#### **§ 64.6050 ICS Ancillary Charges**

Only the following Ancillary Charges may be charged in connection with ICS:

(a) Transaction or Payment Processing Fee. A Provider may charge up to (i) \$3.00 for automated payments via phone IVR, website or kiosk, (ii) \$5\$6.95 for live agent payment processing, and (iii) 5% of the transfer amount for a transaction by which a Consumer uses a credit card or debit card (i) to fund transfer from the inmate's trust/commissary a Debit account to the inmate's debit phone account, or (ii) to pay amounts due in arrears.

(b) –Money Transfer Fee. A Provider may arrangecharge up to receive\$2.50 to administer payments processed by or generated through a third-party money-transfer agent and must select the lowest priced commercially available product from each money transfer agent used. A provider may not enter into a revenue sharing arrangement with a third party money transfer agent or impose any supplemental fee for the processing of such payments-transfer entity.

(c) Voice Biometrics Fee. -A provider may chargeadd up to \$0.02 to the per-minute calling rate for voice biometrics where such technology is deployed and active.

(d) Optional, Single Call Programs. Single Call programs, including "convenience" or "premium payment" options, which allow the called party to pay for a single call without establishing a prepaid collect account (e.g., billing directly to credit/debit card or billing to an existing wireless telephone account), may only be offered as follows:

(i) (i) —The Provider must clearly disclose to Consumers at the beginning of each call that the ability to place a Single Call is optional and must make other methods of payment or establishing credit available.

- ~~(ii) (ii)~~—Total charges for a Single Call shall not exceed the applicable amount that the Provider charged for that service on December 31, 2014.

~~(c) Validation/ Security Fee.~~ A Provider may charge, on a per-call basis, a fee to recover the cost of call validation that is up to 8% of the total calling rate ~~cap plus~~ charged for the call, excluding any ~~applicable per-minute~~ Facility Administrative Support for the actual call duration ~~plus the permissible ancillary charge for an automated payment by phone charge that may be added to the calling rate.~~

- ~~(iii)~~—Providers ~~unable to calculate actual call duration at the time of the call may opt to charge the full duration charge and then credit the called party's credit card for the unused minutes.~~

~~(e) ICS Providers may utilize affiliated vendors to provide payment processing, money transfer or voice biometric services provided that any arrangements for the provision of affiliated services comply with the applicable caps on Ancillary Charges.~~

#### **§ 64.6060 Facility Administrative Support**

~~(a) (a)~~—No Provider may pay a Site Commission or any other form of monetary compensation or in-kind products or services except for the Facility Administrative Support established herein. Payment of a Site Commission exceeding the Facility Administrative Support established in this part shall be an unjust and unreasonable practice.

~~(b) (b)~~—A Confinement Facility can elect to receive Facility Administrative Support by requiring the collection of such support in the contract governing the provision of ICS by the Provider.

~~(c) (c)~~—To compensate Confinement Facilities for their costs incurred in connection with the provision of ICS, an ICS Provider may collect from Consumers charges for Facility Administrative Support, such charges to be assessed on a per minute of use basis, not to exceed the following amounts, for all completed, billed, inmate-initiated calls from an electing Confinement Facility.

Type	Size (ADP)	Maximum Amount per Minute
Jail	1-349	\$0.0703
Jail	350-999	\$0.0502
Jail	1,000-2,499	\$0.0501
Jail	2,500+	\$0.03
Prison	All	\$0.02

The entire amount of Facility Administrative Support charges collected by a Provider from Consumers shall be passed through to an electing Confinement Facility. ~~In the case of a Jail that is contracted to house prison inmates averaging 40% or more of the total facility population, the Facility Administrative Support payment for those prison inmates housed in jails will be based on the prison rate.~~ A Provider may only collect Facility Administrative Support charges when the Confinement Facility has elected to receive such payment. Nothing



in this section is intended to permit a Provider to collect or to pay Facility Administrative Support in excess of the amount provided for in a contract between the Provider and the Confinement Facility.

~~(d)~~ (d) No pre-payment or advance payment of Facility Administrative Support shall be permitted. Costs associated with Additional Products or Services provided to the Confinement Facility shall not be deducted from the Facility Administrative Support payment.

~~(e) Jails and other facilities subject to Jail Rate Caps shall provide certifications, signed by a duly authorized officer of the facility, to the ICS Provider of (i) ADP, and (ii) the percentage of prison inmates in the total inmate population for the facility. The certifications shall be provided as of the commencement of service by an ICS Provider and, thereafter, annually with data as of December 31. Jails that do not provide the required certifications are ineligible for receipt of Facility Administrative Support. Any Facility Administrative Support funds collected by an ICS Provider are held for the benefit of the electing facility. Any unclaimed funds must be refunded to consumers or disposed of in accordance with applicable state law regarding unclaimed property.~~

#### **~~§ 64.6070 Additional Products and Services~~**

~~ICS Providers offering Additional Products and Services must maintain a product/services list in a form consistent with Attachment 1 accessible by the public from the provider's website that contains each product/service, price range, product vendor, and source of funding. This list must be provided with the ICS Annual Report, but is not subject to Commission approval. Costs associated with additional products and services are subject to separate accounting from ICS and are not recoverable in the rates charged to Consumers for ICS.~~

#### **§ 64.6080 Account Balances**

Account balances must be refunded to customers at any time upon Consumer request at no charge to the Consumer. —Unclaimed account balances must be treated in accordance with applicable state law regarding unclaimed property.

#### **~~§ 64.6090 Consumer Protection and Disclosure~~**

~~(a) ICS Providers must provide consumers with the following information for each individual facility, readily accessible on the provider's website (directly from the main home page and without having to first establish an account), through brochures available at facilities (electronic or paper form), and through customer service IVR or live agent inquiry:~~

- ~~(i) — Facility name;~~
- ~~(ii) — Average Daily Population (ADP) (not applicable to brochure);~~
- ~~(iii) — Account options available at the facility;~~
- ~~(iv) — Per Minute Call Rate, Voice Biometric Fee if applicable, Per Minute Administration Support Fee, and total rate per minute the consumer should expect to pay before taxes;~~
- ~~(v) — Method for obtaining a refund of unused funds;~~
- ~~(vi) — Information on how to file a complaint with the Commission or applicable state regulatory agency.~~

(b) ICS Providers must provide all called party Consumers a monthly account statement available online. The statement must include an itemized listing of account activity (deposits, calls, credits, etc.), with a separate line item listing for each tax and/or mandated regulatory fee applied, and total charges. The statement must clearly indicate the rates applicable (e.g., Per-Minute Rate, Voice Biometric Fee, and Facility Administrative Support).

(c) The obligations of this section are in addition to customer service requirements applicable generally to telecommunications providers.

\* \* \*

### Effective Date and Transition Period

(a) ~~Restrictions on ancillary charges, single call programs, and revised interstate rates~~ Except as provided in subsection (b), all provisions of this subpart become effective 90~~30~~ days after publication of ~~Order~~ these rules in the *Federal Register*. (Effective Date).

For existing contracts (Sections 64.6040 (Inmate Calling Services Rate Cap) and 64.6060 (Facility Administrative Support)) shall not apply to ICS services provided pursuant to contracts that ~~have been~~ were executed and ~~are~~ were "in service" at the time of Order adoption), intrastate rates and site commissions payable on intrastate rates are grandfathered for the earlier of months from the Order's adoption date or the expiration or on or before [the day prior to adoption of the Order]) until 60 days after the Effective Date or until termination of the contract, whichever is earliest. The terms of existing contracts may not be extended during the 60 day transition period, whether by exercise of an existing option or otherwise. For all contracts not "in service" on the Order adoption's date, new intrastate rate caps, Administrative Support Fee and prohibition of site commissions are effective 90 days after publication of the Order in the Federal Register.

An ICS provider may opt into full compliance for particular facilities prior to the end of the transition period (including Facility Administrative Support) upon submission of a certification signed by an officer of the company stating that the provider is in compliance with the Order's intrastate and interstate rate caps and prohibition on site commissions as to the specified facilities. Within 60 days of the Order's adoption date, providers are required to file with the Commission a list of all "grandfathered" contracts, together with contract expiration dates and a copy of each Facility Commission Statement for the month the Order is adopted.

### Intrastate Issues

(b) States must bring regulations into compliance by the end of transition period (\_\_\_\_\_ months from Order's adoption date); inconsistent regulations will be subject to preemption. State action that is consistent with the regulations that the Commission adopts would not be subject to preemption.

**EXHIBIT C**

**COMPARISON OF A. LIPMAN PROPOSED ICS RULES  
TO SECURUS PROPOSED RULES FILED JULY 27, 2015**

**ATTACHMENT B — Pay Tel's — Proposed Rules as Amended**

This subpart is replaced in its entirety by Securus (Clean Version) the following:

**§ 64.6000 Definitions**

As used in this subpart:

(1) ~~(1)~~ “ADP,” or “Average Daily Population,” means the average monthly inmate population in a Confinement Facility. Where more than one Confinement Facility is administered under one ICS contract, ADP shall be calculated by adding together the numbers of inmates housed in all facilities under the contract. For purposes of the ICS Rate Cap and Facility Administrative Support, ADP shall be initially determined as of the commencement of service based on the average of the preceding calendar year and then updated once per year in January with any required rate adjustments to be made effective February 1.

(2) ~~(2)~~ “Ancillary ~~charges~~Charges” means any charges to Consumers for communications services not included in the charges assessed for individual calls and that Consumers may be assessed for the use of Inmate Calling Services. ~~Ancillary Charges includes, but is not limited to, fees to create, maintain, or close an account with a Provider; and fees in connection with account balances, including fees to add money to an account or transfer money between accounts;~~

(3) ~~(3)~~ “Collect calling” means a calling arrangement whereby a credit qualified called party agrees to pay for charges associated with an Inmate Calling Services call originating from an Inmate Telephone;

(4) ~~(5)~~ “Consumer” means the party paying a Provider of Inmate Calling Services;

(5) ~~(6)~~ “Confinement Facility” means city, county, regional, state and federal facilities, including jail, detention, prison, work release, mental health, juvenile, and U.S. Immigration and Customs Enforcement facilities;

(6) ~~(7)~~ “Debit calling” means a calling arrangement that allows an inmate to pay for ICS by purchasing a prepaid card or transferring funds to a debit phone account;

~~(8)~~ “Direct billed calling” means a calling arrangement that allows credit qualified called parties (7) to establish an account to accept collect phone calls and be direct billed in arrears for those calls by the ICS vendor;



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(8) ~~(9)~~ "Facility Administrative Support" means a ~~component of ICS costs, charge~~ measured on a per minute basis, ~~related to be passed through to a confinement facility's~~ Confinement Facility to offset its administrative costs associated with the provision of ICS.

(9) ~~(10)~~ "Inmate" means a person detained at a Confinement Facility, regardless of the duration of the detention.

(12) ~~(11)~~ "Inmate calling services," or "ICS," means the offering of local, interstate, intrastate, and/or international calling capabilities from an Inmate Telephone.

(13) ~~(12)~~ "Inmate ~~telephone~~ Telephone" means a telephone instrument or other device capable of initiating telephone calls set aside by authorities of a ~~correctional institution~~ Confinement Facility for use by Inmates.

(14) ~~(13)~~ "Prepaid Calling" means a calling arrangement that allows Consumers to pay in advance for a specified amount of Inmate Calling Service.

(15) "Prepaid collect calling" means a calling arrangement that allows the called party to establish a prepaid account for acceptance and payment of future calls from inmates.

(16) ~~(14)~~ "Provider of Inmate Calling Services," "ICS Provider" or "Provider," means any ~~telecommunications~~ communications service provider that provides Inmate Calling Services, regardless of the technology used.

(17) ~~(15)~~ "Site ~~commission~~ Commission" means any monetary payment ~~from~~ remitted by an ICS Provider on a recurring or non-recurring basis to (a) the entity that operates a correctional institution, (b) the entity with which a Provider enters into an agreement to provide ICS to a Confinement Facility, (c) a governmental agency that oversees a ~~correction~~ correctional institution, (d) the state, county, or city where the correctional institution is located, or (e) to an agent or other representative of ~~the entities~~ an entity described in (a)-(d).

#### **§ 64.6010 Rates for Telecommunications Relay Service (TRS) Calling**

No Provider shall levy or collect any charge in addition to or in excess of the rates for Inmate Calling Services (including any applicable Facility Administrative Support) or charges for Ancillary Charges for any form of TRS call.

#### **§ 64.6020 Billing-Related Call Blocking**

No Provider shall prohibit or prevent completion of a Collect Calling call or decline to establish or otherwise degrade Collect Calling solely for the reason that it lacks a billing relationship with the called party's communications service provider unless the Provider offers Debit Calling, Direct Billed Calling, or Prepaid Collect Calling.

#### **§ 64.6030 Annual Reporting and Certification ~~Requirement~~ Requirements**

(a) (a) All Providers must submit a report to the Commission, on April 1 of each year, stating the total amount of ~~Facility Administrative Support~~ payments the Provider remitted to any entity identified in the definition of Site Commissions that is adopted herein.

(b) (b) On April 1 of each year, all Providers must file certifications of (i) the most senior person who has authority to bind the Provider, (normally the CEO), (ii) the most senior in-house attorney for the Provider, (normally the General Counsel), and (iii) the most senior person charged with handling the Provider's financial accounts (normally the CFO), that the Provider has complied with all Rules adopted herein to the best of their knowledge, information, and belief.

(c) In addition to the certification required under subsection (b), on April 1, 2016, April 1, 2017 and April 1, 2018 all ICS Providers must submit a certification executed by an officer of the company providing the following information —

i) the ICS provider's current interstate and intrastate maximum ICS rates;

ii) the ICS provider's current list of ancillary services and fees;

iii) the locations where the ICS provider makes Facility Administrative Support payments and the amount of such payments.

#### **§ 64.6040 Inmate Calling Services Rate Cap**

(a) No Provider may charge a rate for any inmate-initiated call from a Confinement Facility that exceeds the following ~~rate caps~~rates (excluding any charge for Facility Administrative Support):



<u>Size (ADP)</u>	<u>Rate Cap</u>
0-349 [FCC to determine]	\$0.22/min. [FCC to determine]
350-999 [FCC to determine]	\$0.20/min. [FCC to determine]
1,000-2,499 [FCC to determine]	\$0.18/min. [FCC to determine]
2,500+ [FCC to determine]	\$0.16/min. [FCC to determine]

<u>Type</u>	<u>Rate Cap</u>
All Debit and Prepaid ICS Calls	\$0.20/min.
All Collect Calls	\$0.24/min.

(b) All charges shall be assessed on a per-minute basis for the actual call duration, measured from call acceptance to call termination rounded up to the next full minute. No Provider may charge a per-call fee, per-call surcharge, or connection fee.  
~~call surcharge, or connection fee may be charged.~~

~~(b)(c)~~ An ICS Provider may petition for a Waiver of the Rate Cap if the rate cap does not allow the Provider to economically serve the Confinement Facility. A petitioner may establish good cause for a waiver by demonstrating it faces special circumstances and that a waiver would be in the public interest. Factors that may be considered for granting a waiver include costs directly related to the provision of ICS; demand levels and trends; a reasonable allocation of common costs shared with the ICS Provider's non-ICS; and general and administration costs data. A Waiver will be evaluated at a holding company level.

(d) For any security-related or call-completion related ~~feature~~ features not contained within the cost information submitted by the Provider in response to the 2014 Mandatory Data Collection, the Provider may seek a Waiver of the Rate Caps in order to recover the cost of that feature. –A Petition for Waiver (i) must set forth the cost basis for the requested new rate, and (ii) will be deemed granted within forty-five (45) calendar days of being filed.

#### § 64.6050 ICS Ancillary Charges

Only the following Ancillary Charges may be charged in connection with ICS:

(a) Transaction or Payment Processing Fee. A Provider may charge up to \$6.95 for a transaction by which a Consumer uses a credit card or debit card (i) to fund a Debit account, or (ii) to pay amounts due in arrears.

(b) Money Transfer Fee. A Provider may charge up to \$2.50 to administer payments processed by or generated through a third-party money-transfer entity ~~such as Western Union and Moneygram.~~

(c) Voice Biometrics Fee. A provider may add up to \$0.02 to the per-minute calling rate for voice biometrics where such technology is deployed and active.

(d) Optional, Single Call Programs. Single Call programs, including “convenience” or “premium payment” options, which allow the ~~called~~ party to pay for a single call without

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establishing a prepaid collect account (e.g., billing directly to credit/debit card or billing to an existing wireless telephone account), may only be offered as follows:

(i) ~~(i)~~ — The Provider must clearly disclose to Consumers at the beginning of each call that the ability to place a Single Call is optional and must make other methods of payment available.

(ii) ~~(ii)~~ — Total charges for a Single Call shall not exceed the amount that the Provider charged for that service on December 31, 2014.

(e) Validation/ Security Fee. A Provider may charge, on a per-call basis, a fee to recover the cost of call validation that is up to 8% of the total calling rate charged for the call, excluding any per-minute Facility Administrative Support charge that may be added to the calling rate.

#### § 64.6060 Facility Administrative Support

(a) ~~(a)~~ Beginning 24 months after the Effective Date of these Rules, ~~no~~ No Provider may pay a Site Commission or any other form of monetary compensation except for the Facility Administrative Support established herein. Payment of a Site Commission exceeding the Facility Administrative Support established in this part shall be an unjust and unreasonable practice.

(b) ~~(b)~~ A Confinement Facility can elect to receive Facility Administrative Support by requiring the collection of such support in the contract governing the provision of ICS by the Provider.

(c) ~~(c)~~ To compensate Confinement Facilities for their costs incurred in connection with the provision of ICS, an ICS Provider may collect from Consumers charges for Facility Administrative Support, such charges to be assessed on a per minute of use basis, not to exceed the following amounts, for all completed, billed, inmate-initiated calls from an electing Confinement Facility.

~~exceed the following amounts, for all completed, billed, inmate-initiated calls from an electing Confinement Facility.~~

Size (ADP)	Maximum Amount per Minute
<del>1-349 [FCC to determine]</del> 1-299	<del>\$0.07 [FCC to determine]</del> 03
<del>350-999 [FCC to determine]</del> 300-999	<del>\$0.05 [FCC to determine]</del> 02
1,000+	\$0.01
<del>1,000-2,499 [FCC to determine]</del>	<del>\$0.05 [FCC to determine]</del>
<del>2,500+ [FCC to determine]</del>	<del>\$0.03 [FCC to determine]</del>

The entire amount of Facility Administrative Support charges collected by a Provider from Consumers shall be passed through to an electing Confinement Facility. A Provider may only collect Facility Administrative Support charges when the Confinement Facility has elected to



receive such payment. Nothing in this section is intended to permit a Provider to collect or to pay Facility Administrative Support in excess of the amount provided for in a contract between the Provider and the Confinement Facility.

(d) (d)—No pre-payment or advance payment of Facility Administrative Support shall be permitted. Costs associated with Additional Products or Services provided to the Confinement Facility shall not be deducted from the Facility Administrative Support payment.

#### **§ 64.6080 Account Balances**

Account balances must be refunded to customers at any time upon Consumer request at no charge to the Consumer. Unclaimed account balances must be treated in accordance with applicable state law regarding unclaimed property.

#### **§ 64.6090 Effective Date and Transition Period**

Unless otherwise stated, the Rate Caps and Rules adopted Except as provided in subsection (b), all provisions of this Order subpart become effective

(a) 90 30 days after publication of Order these rules in the Federal Register. (Effective Date).

For existing Sections 64.6040 (Inmate Calling Services Rate Cap) and 64.6060 (Facility Administrative Support) shall not apply to ICS services provided pursuant to contracts (contracts that have been were executed and are were "in service" at on or before [the time of Order day prior to adoption); intrastate rates and site commissions payable on intrastate rates are grandfathered for the earlier of 24 months from of the Order]) until 60 days after the Order's adoption date or the expiration Effective Date or until termination of the contract, whichever is earliest. The terms of existing contracts may not be extended during the 60 day transition period, whether by exercise of an existing option or otherwise. For all contracts not "in service" on the Order adoption's date, new intrastate rate caps, Administrative Support Fee and prohibition of site commissions are effective 90 days after publication of the Order in the Federal Register.

#### **Intrastate Issues**

States must bring regulations into compliance by the end of transition period (24

(b) months from Order's adoption date); inconsistent regulations are hereby preempted. State action that is consistent with the regulations that the Commission adopts would not be subject to preemption.